



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNL FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 13, 2017 (the "Application"). The Tenant applied for an order cancelling a notice to end tenancy for landlord's use of property, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on his own behalf and called a witness, J.B., to give testimony. The Landlord also attended the hearing in person and was assisted by P.T., an agent. All parties giving testimony provided a solemn affirmation.

The Tenant confirmed that the Application package, which included the Notice of a Dispute Resolution Hearing, was served on the Landlord in person on March 13, 2017. The Landlord acknowledged receipt on that date. Accordingly, I find the Landlord was duly served with and received the Tenant's Application package on March 13, 2017. The Landlord did not submit any documentary or digital evidence in response to the Tenant's Application.

No issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

Neither the Tenant nor the Landlord submitted a copy of the notice to end tenancy for landlord's use of property into evidence. Accordingly, the parties were provided with a fax number and instructed to submit a copy of the notice to end tenancy for landlord's use of property to my attention before 2:00 p.m. on today's date, which they did.

The Tenant submitted a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 28, 2017 (the "2 Month Notice") by fax. The effective date on the 2 Month Notice is April 30, 2017. The 2 Month Notice was submitted along with a hand-written note that suggested the Tenant had been "cut off" from the hearing and could not get back to the call. In fact, after providing both parties with a full opportunity to be heard, the parties were advised that the hearing would be ending and that I would prepare a written decision which would be sent to both parties at the email addresses provided. The parties were thanked for their participation and the conference call was ended.

### Issue

Is the Tenant entitled to an order cancelling a notice to end tenancy for landlord's use of property?

### Background and Evidence

The Tenant occupies one of two basement suites in the Landlord's home. The parties agreed the Tenant moved into his rental unit on or about September 1, 2014. Rent in the amount of \$600.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$300.00.

On behalf of the Landlord, P.T. advised that the parents of the Landlord's spouse, and his newly-married sister, intend to occupy the two suites, one of which is currently occupied by the Tenant. According to P.T., there is not enough room upstairs for these family members, who are coming from India. Accordingly, the Landlord issued the 2 Month Notice. The 2 Month Notice was issued on the following basis:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

[Reproduced as written.]

The Tenant acknowledged receipt of the 2 Month Notice on February 28, 2017.

In reply to the Landlord's evidence, the Tenant testified that the Landlord has harassed him and is merely trying to avoid the rent increase provisions of the *Act*. He submitted that the real reason the Landlord wishes to end the tenancy is to get more rent for the basement suite.

The Landlord called a witness, J.B., who testified that he lives in the other rental unit and has also received a notice to end tenancy for landlord's use of property. J.B. testified that he hears stomping on the floor above, and that it is difficult to find a place to live in today's rental market.

In response to the Tenant's allegation that the Landlord simply wishes to increase the rent, P.T. advised confirmed there was a previous discussion about increasing the rent. However, that conversation occurred before family members were coming to live in the rental unit, and a rent increase was never implemented.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the *Act* permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On careful review of the evidence tendered by both parties, I find the 2 Month Notice was issued in accordance with the *Act* and was received by the Tenant on February 28, 2017. There is insufficient evidence before me to conclude the Landlord does not intend to use the rental unit for the purpose indicated on the 2 Month Notice. Accordingly, the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. As I have dismissed the Tenant's Application and determined the 2 Month Notice complied with section 52 of the *Act*, I grant the Landlord an order of possession. The order of possession will be effective two (2) days after service of the order on the Tenant.

### Conclusion

The Tenant's Application is dismissed and the 2 Month Notice is upheld.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective on April 30, 2017, at 1:00 p.m. The order of possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2017

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Residential Tenancy Branch